

REMARKS

Claims 1-11 were examined and reported in the Office Action. Claims 1-11 were rejected. Claim 1 is amended. Claims 1-11 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. §112, second paragraph

Claims 1-11 are rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claim 1 to overcome the 35 U.S.C. §112, second paragraph rejection.

Accordingly, withdrawal of the 35 U.S.C. §112 rejection for claims 1-11 is respectfully requested.

II. 35 U.S.C. §102

It is asserted in the Office Action that claims 1-11 are rejected under 35 U.S.C. §102(b) as being anticipated by DE 19609314A1 issued to Baumeister et al. ("Baumeister"). Applicant respectfully disagrees.

According to MPEP §2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990))."

Applicant's amended claim 1 contains the limitations of "[a] device used in conjunction with a tipper vehicle having a tipper hopper, a frame element and at least one abutment plate that is rigidly connected to one of the tipping hopper and the frame element and has an abutment surface for bearing against an opposing surface on the tipper hopper, the abutment surface of the abutment plate being constituted by a frictional material that has a rigid consistency and the abutment surface having a coefficient of friction in the range of about 0.1-0.2."

Baumeister discloses an abutment plate where the abutment surface has frictional material. The abutment plate disclosed by Baumeister, however, is part of a trailer coupling, not a tipper vehicle. Baumeister does not teach, disclose or suggest "[a] device used in conjunction with a tipper vehicle having a tipper hopper, a frame element and at least one abutment plate that is rigidly connected to one of the tipping hopper and the frame element and has an abutment surface for bearing against an opposing surface on the tipper hopper, the abutment surface of the abutment plate being constituted by a frictional material that has a rigid consistency and the abutment surface having a coefficient of friction in the range of about 0.1-0.2.

Further, the coupling of Baumeister makes movements of low frequency and great amplitude. All movements take place in one and the same plan. Distinguishable, in Applicant's claimed invention the abutment plate makes high frequency movements of very small amplitude. And, the movements are multi-directional. Secondly, the coupling of Baumeister has only has to withstand seldom and soft impacts, while the abutment plate of Applicant's claimed invention often and hardly hits the opposing surface.

Moreover, Applicant's claimed invention has a surprising effect that the consistency of the frictional material is able to damp the impact of the tipping hopper and despite the low coefficient of friction of the frictional material, there is very good damping of the transverse movements of the hopper.

Therefore, since Baumeister does not disclose, teach or suggest all of Applicant's amended claim 1 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(b) has not been adequately set forth relative to Baumeister. Thus, Applicant's amended claim 1 is not anticipated by Baumeister. Additionally, the claims that directly or indirectly depend on claim 1, namely claims 2-11, are also not anticipated by Baumeister for the same reason.

Accordingly, withdrawal of the 35 U.S.C. §102(b) rejection for claims 1-11 is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely 1-11, patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,
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I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Nedy Calderon

9/27/04

Date